IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1646 OF 1999

Punnilathu Bappu Navas
Indian Inhabitant, having
his address at Punnilath
House, P. Venballoore,
Kodangaloor, P.O. Trichur,
Kerala, presently at Bombay .. Petitioner.

V/s.

1. Union of India

2. Joint Secretary to the
Government of India
having his office at
4th Floor, Jeevandeep,
Sansad Marg, (Parliament
Street), New Delhi 110 001

3. Commissioner of Customs
(Appeals), having his
office at Airpool, Sahar
International Airport,
Mumbai - 400 099.

4. The Additional Commissioner
of Customs, having his
office at Airpool, Sahar
International Airport,
Mumbai - 400 099. .. Respondents.

Mr.Naresh Thacker i/b. Mr.N.M. Shah for the petitioners.

Mr.P.S. Jetly for the respondents.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 14TH JUNE, 2006.

ORAL JUDGMENT (Per V.C. Daga, J.)

Heard learned counsel for the rival parties.

Perused petition.

2. The petitioner on 10th October, 1993 arrived from Muscat holding Gulf Air Ticket for the Sector, Bombay-Muscat-Bombay/ The petitioner was intercepted and his baggages were examined and gold weighing 10,144.20 gms. was recovered from him. Panchanama was duly drawn and the gold in question was seized. The petitioner on 20th October, 1993 was arrested and produced before the Chief Metropolitan Magistrate and came to be remanded to the Judicial Custody. The petitioner's statement was recorded under section 108 of the Customs Act, 1962 and thereafter, he was released.

3. In the aforesaid statement, the petitioner made a statement that the gold which was purchased by him was out of his own savings. The said gold was to be sold in India at Trichur for the purpose of making a profit since the petitioner had desired to start some business in India.

4. After recording aforesaid statement of the petitioner, a show cause notice dated 2nd April, 1994 came to be issued. The petitioner replied to the said show-cause notice. He was heard. After hearing him; the respondent No.4 was pleased to pass an order confiscating gold and also imposed penalty of

Rs.4,00,000/- under section 112(a) of the Customs Act, 1962.

5. Being aggrieved by the said order, the petitioner preferred appeal before the Commissioner of Customs (Appeals) and on 7th February, 1997 obtained an interim relief subject to deposit of 50% amount of penalty. Hearing of appeal was directed on 28th February, 1997.

6. The petitioner not being satisfied with the above order dated 7th February, 1997 preferred revision under Section 129DD before the respondent No.2. In the meantime, aforesaid main appeal came up for hearing; which, ultimately, came to be dismissed for non-deposit of the amount as directed by the respondent No.3.

7. The respondent No.2 vide order dated 29th August, 1997 passed in revision directed restoration of the appeal and permitted the petitioner to deposit Rs.1,00,000/- by way of part payment of the penalty within one month of the receipt of the order. In the revision, order dismissing appeal for non-compliance of order of deposit came to be set aside and the proceedings came to be remanded back to the respondent No.3 for consideration afresh.

8. The remanded appeal was, ultimately, came to be allowed on merits vide order dated 17th December, 1997. The petitioner was allowed to redeem gold weighing 5 kg. on payment of fine of Rs.1,00,000/- and balance 5144.29 kgs. of gold was allowed to be re-shipped on payment of fine of Rs.5,00,000/-.

9. Being aggrieved by the aforesaid order dated 17th December, 1997 the petitioner again preferred revision under Section 129DD of the Customs Act, 1962. The respondent No.2 - revisional authority was pleased to pass an order dated 31st July, 1998 allowing 5 kgs. of gold on payment of redemption fine amounting to Rs.5,00,000/- + duty at the normal baggage rate and the balance gold was ordered to be confiscated. The original order imposing penalty on the petitioner came to be restored.

10. Being aggrieved by the aforesaid order dated 31st July, 1998, the petitioner has invoked writ jurisdiction of this Court under Article 226 of the Constitution of India; to contend that the respondent No.2 was not justified in confiscating gold and committed an error in restoring the fine imposed by the original authority.

11. Mr.Naresh Thacker, learned counsel for the

petitioner contends that respondent No.2 was not justified in passing the order imposing fine in the sum of Rs.5,00,000/- together with duty. He further submits that in number of cases wherein such gold was seized for non-declaration before the Customs Authorities, the re-shipment of the gold was allowed on payment of fine and penalty as such petitioner's case ought to have been considered accordingly by the respondents. The petitioner ought to have been given similar treatment given in number of identical cases where the re-shipment of the gold has been allowed as the petition was placed in the similar circumstances.

12. Mr.Thacker further submits that the gold weighing 10 kg. was to be carried by the petitioner to India along with his fellow passenger. But fellow passenger because of some unavoidable reasons could not board the flight with the result petitioner was required to carry total gold weighing 10 kg. with him. Mr.Thacker, thus, submits that while releasing gold under the notification dated 1st March, 1992 two units; @ 5 kg. per person ought to have been considered and total 10 kg. gold ought to have been released in favour of the petitioner.

12. Mr.Jetly, learned counsel appearing for the revenue while supporting the impugned order submits

that the entire import of gold was contrary to the Notification No.117/92-Cus. dated 1st March, 1992. He, thus, submits that as a matter of fact entire gold ought to have been confiscated. He further submits that the import of gold beyond 5 kgs. was not permissible as per the policy adopted by the Central Government. He further submits that actually the order of release is not preferable to the notification dated 1st March, 1992. The revisional authority while exercising discretion in favour of the petitioner merely borrowed assistance from the said Notification dated 1st March, 1992; and followed given thereunder.

13. Mr.Jetly submits that the view taken by the respondent No.2 is a reasonable and possible view and in exercise of writ jurisdiction under Article 226 of the Constitution of India, this Court should not interfere with the impugned order.

14. Having heard rival parties and having examined the factual matrix involved in the case and having considered the terms of the Notification dated 1st March, 1992, we are satisfied that the respondent No.2 has exercised discretion in favour of the petitioner while allowing the redemption of 5 kgs. of gold borrowing assistance from the Notification

dated 1st March, 1992. The said notification is not the foundation of the order. The exercise of discretion is reasonable and the view taken is a possible view. No case is made out to interfere with the impugned order.

15. In the above view of the matter, petition has no merit. In the result, petition is dismissed with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)